

Docket No.: 02-0427
Bench Date: 08-20-02
Deadline: N/A

MEMORANDUM

TO: The Commission

FROM: Donald L. Woods, Administrative Law Judge

DATE: August 8, 2002

SUBJECT: Illinois Commerce Commission
On Its Own Motion
-vs-
Illinois Bell Telephone Company

Investigation of intrastate access charges.

RECOMMENDATION: None

I. Background

On June 19, 2002, the Commission entered an order initiating this docket. At that time some Commissioners expressed an interest in resolving the matters addressed in the order by the end of this calendar year. A pre-hearing conference was held in this matter on July 15, 2002. At that hearing the parties discussed their views of the issues raised by the Initiating Order. The parties could not reach a complete consensus although all agreed that, at a minimum the docket is to examine the LS2 interim rate. To that end a schedule was established with hearings on that issue commencing October 30, 2002, which should result in that issue being resolved before the end of the year.

Because the parties were unable to reach consensus on any additional issues that the Commission wished to be addressed, Staff agreed to file a Motion for Clarification. The Motion was filed on July 19th, Responses were filed on July 26th and Replies on August 2nd.

II. Staff's Motion

Staff begins by noting that, on June 14, 2002 it filed a report requesting an investigation into Illinois Bell Telephone Company's ("Ameritech") interim local switching ("LS2") rate. The Report also requested that the Commission determine whether the intrastate access charges of Ameritech contained in ILL. C. C. No. 21 pages 207 through 231 are just and reasonable. Staff indicates that it intended, by its second request, to recommend that the Commission order an investigation to determine new

permanent access charges, rather than the interim rates currently on file with the Commission. Cost studies for these elements were filed by Ameritech in compliance with the Commission's Order in Docket 97-0601/0602 in May of 2000 for the purpose of setting new permanent rates, but no action has been taken on these studies as of yet. Staff's motion seeks clarification that the Commission intended to investigate permanent rates.

Staff was concerned that the Initiating Order might be interpreted as directing the parties to address all the interim rates that are currently in effect. Staff is of the opinion that there is compelling evidence for the investigation into the interim LS rate, as more fully set forth in the Staff Report. However, Staff did not intend to recommend the investigation of any other interim rates in this proceeding.

Staff accordingly requested that the Commission clarify its intentions regarding the investigation of interim access rates, and give direction to the parties as to its intentions regarding the determination of permanent access rates.

In support of its proposal, Staff first notes that Ameritech no longer supports use of either the cost studies used to develop the interim rates currently in effect or the cost studies filed in May of 2000. However, Staff is concerned that the language in the Order in 97-0601/0602 requires an investigation of the May 2000 studies and that the Initiating Order in this proceeding could be construed to require such an investigation. It is Staff's opinion that such an investigation would be contrary to the interests of all parties involved and that Ameritech should be given full latitude to present the cost studies it feels are most appropriate for this investigation. Staff seeks a clarification as to cost studies it believes are germane for the determination of permanent rates.

Staff also seeks clarification that it was the Commission's intention to resolve only the interim LS rate issues raised in this proceeding prior to the end of the year 2002. In that regard, Staff notes that the parties to this proceeding have developed a schedule that would allow for the completion of the investigation of the interim LS rate issue by the end of the year. If the Commission requires the establishment of permanent rates for all switched access services in this proceeding, each of the parties to the case have indicated that there is not sufficient time to complete the investigation by the end of 2002.

Staff, accordingly, recommends that, in addition to giving the clarification sought in its Motion, the Commission order bifurcation of this proceeding. The first phase, to be completed by the end of 2002, would investigate the appropriateness of Ameritech's LS rates and order any subsequent remedies it found appropriate. The second phase, would establish permanent rates for all switched access services. Staff believes that it is the Commission's intention not to require the parties, Staff, and the Commission itself to devote their resources to analysis of the cost studies Ameritech provided in May of 2000 for this purpose, but rather to require Ameritech to propose permanent rates for investigation based on its most current cost studies.

III. Responses

Both Ameritech and AT&T filed responses to Staff's Motion.

Ameritech begins by indicating that it does not oppose Staff's Motion but cautions that any investigation into the interim switched access rates in effect today should focus on what it terms the "trunk port issue," because that is the only issue about which any IXC has complained. Ameritech asserts that this can be accomplished on a stand-alone basis and within the time frame indicated by the Commission and agreed to by the parties.

Ameritech goes on to indicate that it does not know whether the Commission intended that this proceeding ultimately establish permanent switched access charges, but that it does not appear that the carriers participating in the docket are requesting an investigation into permanent rates at this time. Ameritech opines that, given the number and complexity of other telecommunications proceedings that are already pending before the Commission, there would be merit in deferring yet another major access charge investigation. However, in the event that the Commission decides that such an investigation should be held, Ameritech Illinois supports Staff's procedural proposal bifurcating the inquiry into at least two phases. The Company supports Staff's proposal by asserting that it does not have updated cost studies for switched access charges available at this time and they would need to be prepared. Based on the schedule agreed to by the parties at the status hearing, updated studies could be completed by the time that the Commission issues an order in the first phase of the proceeding addressing the trunk port issue.

AT&T agrees with Staff that the Initiating Order requires, at a minimum, an investigation of the interim local switching access rates currently contained in Ameritech Illinois' ("Ameritech") intrastate-switched access tariffs. These tariffed rates were filed in response to the Commission's Phase II Order in ICC Docket Nos. 97-0601/97-0602.

AT&T also agrees that an investigation of the May 2000 cost studies is not warranted and that an investigation of cost studies supporting all switched access charges could not be completed by the end of this calendar year-- regardless of whether the May 2000 cost studies are used or some other cost studies are presented.

AT&T indicates it cannot speak to whether an investigation into the cost studies supporting Ameritech's permanent access charges is appropriate since it has not seen any vintage of cost studies, May 2000 or otherwise, in support of permanent access rates. In any event, cost studies supporting permanent rates cannot be investigated in this docket since the scope of the Initiating Order in this docket contemplates only the investigation of currently effective tariffed rates that are, by definition, the interim rates.

Specifically, on page 1 of the Initiating Order, the Commission states:

In the Staff Report, Staff recommends that the Commission investigate Ameritech Tariff IL. C. C. No. 21, pages 207 through 231 inclusive, which represent the interim switched access rates filed in response to the Order on Reopening in the consolidated dockets entered on May 16, 2000. These rates are currently in effect.

According to AT&T, this paragraph clearly contemplates an investigation of interim rates only, as they are the ones currently in effect. On page 2 of the Initiating Order, the Commission stated:

[T]he Commission is of the opinion that sufficient cause exists to investigate the tariffs identified by Staff and AT&T to determine whether the rates and charges contained in these tariffs are just and reasonable as required by the Sections 13-503 and 9-101 of the Public Utilities Act ("Act").

Again, according to AT&T, this paragraph contemplates an investigation of the tariffed, i.e., interim rates.

Finally, AT&T suggests that in finding 5 of the Initiating Order, the Commission finds that it should initiate an investigation pursuant to Section 9-250 of the Public Utilities Act to determine whether the rates and service provided by Illinois Bell Telephone Company pursuant to the following tariffs are just and reasonable and in compliance with the law: IL. C. C. No. 21, pages 207 through 231 inclusive and ILL. C. C. No. 21, Page 214. The first ordering paragraph at the top of page 4 orders that an investigation be initiated into whether the access rates for Illinois Bell Telephone Company in the enumerated tariff pages are just and reasonable. Again, these enumerated tariff pages contain only interim rates, not any proposed or effective permanent rates; thus, these are the only rates for which the Initiating Order initiates an investigation. Nowhere does the Initiating Order initiate an investigation into the permanent rates or any cost studies supporting the permanent rates.

AT&T recommends that this docket be allowed to continue on its current course, such that the parties can complete an investigation of the interim local switching rate by the end of 2002. At that time, should it so choose, Ameritech may petition the Commission to initiate, or the Commission can initiate on its own motion, a docket to investigate whatever cost studies it deems appropriate, whether those are the May 2000 cost studies filed by Ameritech or any other cost studies Ameritech proposes, and the permanent rates that result therefrom.

AT&T concludes by requesting that Staff's Motion to Clarify Order be denied or, if granted, that the Initiating Order be clarified to make clear that this docket was intended to only initiate an investigation of the interim local switching rate revised and filed by Ameritech Illinois in June 2000. Should the Commission choose to investigate the permanent access rates of Ameritech, it should do so by initiating such an investigation following the completion of this docket.

IV. Staff Replies

Staff reiterated its recommendations that clarification of the Initiating Order is needed and that the Commission order bifurcation of this proceeding. Under Staff's proposal, the Commission would order the first phase of this docket to investigate the appropriateness of Ameritech's interim LS rates and order any subsequent remedies it found appropriate. The second phase, would establish permanent rates for all Ameritech switched access services. Staff believes that it was not the Commission's intention to examine the cost studies Ameritech provided in May of 2000 for this purpose, but rather to require Ameritech to propose permanent rates for investigation based on its most current updated cost studies.

Staff notes that both AT&T and Ameritech agreed with Staff that this proceeding should first focus on the interim LS rates and that this could be completed by the end of this year. Further, both parties agree with Staff that any investigation into permanent access charge rates would require updated cost studies and that such an investigation could not be completed by the end of this year.

Staff also notes that, while Ameritech took no position on whether the Commission intended to establish permanent rates in this proceeding, Ameritech indicated that updated cost studies could be completed by the time the Commission issues an order in the first phase of this proceeding.

Staff disagrees with AT&T's position that a new docket would be needed to establish permanent rates. The current docket contains sufficient evidence in the Staff Report and the Initiating Order to warrant the proposed two-phase approach. It is Staff's position that going through an additional process of initiating an investigation into Ameritech's permanent access charges is an unnecessary use of scarce Commission resources.

V. Conclusion

As noted above, I am at somewhat of a loss to provide any recommendation in this matter because I drafted neither the Staff report nor the initiating Order and am unclear about exactly what it was that the Commission intended in beginning this docket. I do agree with all of the parties and Staff that we should be able to complete the investigation into the LS2 rate issues by the end of this year but that time will not allow for a complete investigation of all of Ameritech's access charges in the same time frame. I also agree with Staff that there should be no impediment to conducting an investigation into "permanent" access charges (which would in reality be a cost study investigation) in a follow-up proceeding and that the investigation could be undertaken in this docket. In my view AT&T's opposition to this approach was largely procedural in wishing to avoid, at the outset, any arguments from Ameritech that such an investigation was "beyond the initiating Order." Ameritech would seem to have waived any such

argument by virtue of its Response to Staff's Motion in which it suggested such a procedure.

Finally, I have attached to this Memo, a copy of the Staff report and a copy of the initiating Order in the event that the Commission finds one or the other of those documents helpful in resolving this issue.

DLW/lw